

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED  
CLERK**

**JGK 08/18/2017  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE**

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PLAINTIFFS 1-21, :  
:  
Plaintiff, : 15-CV-2431 (ADS) (GRB)  
:  
:  
V. : June 30, 2017  
:  
:  
COUNTY OF SUFFOLK, et al., :  
:  
Defendant. :  
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TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT AND RULING  
BEFORE THE HONORABLE GARY R. BROWN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: MALLORY BRENNAN, ESQ.

For the Defendant: ADRIANA LOPEZ, ESQ.  
SCOTT GREENE, PRO SE

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1 THE CLERK: Calling case 15-CV-2431,  
2 Plaintiffs 1-21 v. County of Suffolk, et al.

3 Counsel, please state your appearance for  
4 the record.

5 MS. BRENNAN: Good morning. This is Mallory  
6 Brennan from Shearman & Sterling, on behalf of  
7 plaintiffs 1 through 21.

8 THE COURT: Would you like to introduce  
9 anyone else who's here on your behalf?

10 MS. BRENNAN: I would be delighted to.

11 THE COURT: Go ahead.

12 MS. BRENNAN: This is my colleague, James  
13 Alicia (ph), also from Shearman & Sterling.

14 THE COURT: Welcome back. Go ahead.

15 MS. BRENNAN: And Joanna Cuevas Ingram, who  
16 joins us from Latino Justice, also on behalf of the  
17 plaintiffs.

18 THE COURT: Excellent. Thank you for  
19 coming.

20 Counsel?

21 MS. LOPEZ: Good morning, your Honor. My  
22 name is Adriana Lopez. I'm here on behalf of Suffolk  
23 County and i8 represent the Suffolk County defendants,  
24 not Mr. Greene.

25 THE COURT: Ms. Lopez, good to see you

1 again.

2 MS. LOPEZ: Thank you, Judge.

3 THE COURT: Mr. Greene, are you on the phone  
4 with us this morning?

5 MR. GREENE: Yes, sir, I am.

6 THE COURT: Very good. I will note your  
7 presence.

8 Ms. Lopez, thank you for arranging that.

9 MS. LOPEZ: No problem, your Honor.

10 THE COURT: This is on for a status  
11 conference. The main issue I would like to deal with  
12 today would be the application by plaintiffs concerning  
13 the protective order on the immigration issue.

14 Would you like to be heard on that?

15 MS. BRENNAN: I would, thank you. I'm  
16 prepared to go ahead if the Court is.

17 THE COURT: Please.

18 MS. BRENNAN: May it please the Court.  
19 Again, Mallory Brennan from Shearman & Sterling on  
20 behalf of plaintiffs.

21 The relief that plaintiffs seek in the  
22 motion for a protective order is narrow but it is  
23 extremely important. The purpose of the motion is to  
24 prevent plaintiffs from being questioned during  
25 depositions about matters that go directly to

1 immigration status. There are three reasons that the  
2 Court should grant the motion today. First, as I  
3 mentioned, the scope of the relief that's requested is  
4 in fact quite narrow. There are only four specific  
5 categories of inquiry that we believe should be  
6 precluded from discovery.

7 THE COURT: Okay, go ahead.

8 MS. BRENNAN: Second, these inquiries are  
9 irrelevant to any material claim or defense in this  
10 case. Plaintiffs are pursuing claims for violation of  
11 their constitutional and civil rights based on racial  
12 and ethnic discrimination, not based on their  
13 immigration status. Finally, the substantial chilling  
14 effect that is widely recognized, caused by inquiries  
15 into immigration status, far outweighs whatever value  
16 questions about plaintiffs' status might yield.

17 With respect to the specific categories, I  
18 think it's important that we be clear about what  
19 plaintiffs are requesting and what we are not  
20 requesting. There are four specific categories as to  
21 which we believe discovery should be precluded.

22 First, questions that go directly to  
23 immigration status. So questions such as, are you  
24 concerned about your immigration status, or, do you  
25 have a green card, should not be permitted.

1           Second, questions that are directed to  
2       separate immigration proceedings such as an application  
3       for an adjustment of status.

4           Third, questions that are directed to a  
5       plaintiff's or witness' entry into the United States,  
6       so when did you come, how long have you been here, how  
7       did you enter the country, how many times have you been  
8       in the United States.

9           Then finally, questions concerning Social  
10      Security numbers, tax i.d. numbers or employment  
11      authorization.

12           All four of those categories go directly to  
13      immigration status. That are the types of inquiries  
14      that courts in this district and elsewhere routinely  
15      prohibit. I just want to be quite clear that in  
16      defendants' opposition, there was the suggestion that  
17      plaintiffs are seeking to prohibit discovery from any  
18      matter that might touch on immigration in any way, and  
19      that that would be a limiting factor to defendants in  
20      pursuing their claims, and that is not the scope of  
21      relief that plaintiffs are seeking here.

22           THE COURT: I can't say I would blame  
23      counsel if the precise contours were not that clear  
24      because the iterative process by which this developed  
25      does leave some questions. Before I let you walk away

1 from that point --

2 MS. BRENNAN: Certainly.

3 THE COURT: Your fourth category, Social  
4 Security numbers, employment authorizations, do you  
5 consider motor vehicle licenses in the same category?

6 MS. BRENNAN: No, we don't. We consider  
7 that to be distinct. So, too, for example with vehicle  
8 registration. I believe that the defendants had  
9 suggested that plaintiffs were seeking to preclude  
10 testimony about names that plaintiffs may have used.  
11 It's common in the Latino community for individuals to  
12 have multiple names as opposed to just the two or three  
13 that might be common outside of that community, and  
14 plaintiffs aren't seeking to prohibit any of that  
15 discovery. In fact, though I appreciate that the Court  
16 does not have the full record from the depositions that  
17 have taken place to date in this case.

18 Defendants' counsel, however, was present  
19 and the only questions where plaintiffs were instructed  
20 not to answer are questions that fall into the  
21 categories that I've articulated here. So this is not  
22 -- we're not trying to make it impossible for  
23 defendants to prove their case. We're just trying to  
24 get an appropriate degree of protection so that  
25 plaintiffs are comfortable pursuing their

1 constitutional rights.

2           If there are no further questions with  
3 respect to the categories, I'll turn to my second  
4 point, which concerns the irrelevance of immigration  
5 status to the claims and defenses in the case. As I  
6 explained and as is apparent on the face of the  
7 complaint, plaintiffs are pursuing claims for  
8 discriminatory police practices based on their ethnic  
9 heritage, based on their race, not based on immigration  
10 status.

11           Simply put, there's just no way that you can  
12 look at a person, whether they're of Latino heritage or  
13 any other ethnic background, and evaluate whether they  
14 are American citizens, whether they're in this country  
15 illegally. You can't know that on site. So  
16 plaintiffs' allegations here are directed to -- if you  
17 look in the complaint, for example, nearly fifty times,  
18 we allege that Suffolk County Latinos have been targets  
19 of discriminatory police practice, and I quote, "solely  
20 because they are Latino."

21           Indeed, the only allegations in the  
22 complaint that anywhere mention undocumented status or  
23 immigration status concern the defendants' own  
24 perceptions and racial profiling based on assumptions  
25 which we contend derive from plaintiffs' Latino

1 heritage. So to the extent that there is any discovery  
2 that is even worthwhile touching on immigration status,  
3 it should be with respect to defendants' own  
4 perspectives and beliefs, not with respect to whether  
5 or not plaintiffs are undocumented.

6 I'd like to touch briefly on the defenses  
7 that defendants contend they will be limited from  
8 pursuing if the Court grants plaintiffs' motion.

9 First, the Suffolk County defendants contend that they  
10 will seek to establish that defendant Greene was a  
11 rogue actor and that he was targeting plaintiffs  
12 because he believed that Latino motorists were more  
13 likely to be undocumented, unlicensed, and therefore  
14 unlikely to file complaints with the Suffolk County  
15 Police Department about his conduct. Again, that goes  
16 to defendant Greene's own beliefs and perceptions, not  
17 whether plaintiffs are or are not undocumented.

18 With respect to defendants' contention that  
19 they shouldn't be -- that the Suffolk County defendants  
20 couldn't possibly be expected to investigate crimes or  
21 concerns that weren't reported to them, that simply  
22 misconstrues the complaint in this case. We're not  
23 alleging that they should have been clairvoyant, we're  
24 alleging that they should have had better systems in  
25 place to monitor and that they failed to investigate

1 claims that were actually reported.

2 In any event, that issue is something of a  
3 side show because plaintiffs, when questioned about  
4 whether they were afraid to report their experiences  
5 with defendant Greene or other of the John doe  
6 defendants, have answered that question. So we're not  
7 seeking to preclude the county from inquiring about  
8 whether defendants were afraid, only from going so far  
9 as to inquire as to immigration status.

10 Finally, defendants make the point in their  
11 opposition a couple of times that they should be able  
12 to inquire into immigration status because it goes to  
13 plaintiffs' credibility. That is simply not sufficient  
14 justification for discovery into immigration status.

15 THE COURT: You had me at hello on that  
16 particular argument.

17 MS. BRENNAN: All right. I will move on  
18 then. I'll move on to my final point, which is that  
19 the substantial effect of inquiries into immigration  
20 status far and away outweighs whatever probative value  
21 defendants think that they might gain from making  
22 inquiries into that subject matter.

23 Magistrate Judge Pollack in the Eastern  
24 District put it this way in Wejaja v. King UUSA (ph).  
25 She recognized that as a starting point, discovery into

1 immigration status is not normally available. This is  
2 because the fear and intimidation that's created by  
3 having to answer questions about immigration status is  
4 a real issue. It's a real concern. The Ninth Circuit  
5 put it this way in Rivera v. Nibco (ph). If discovery  
6 into immigration status was permitted in every civil  
7 rights case that asserts claims based on race  
8 discrimination or ethnic heritage, there would be broad  
9 swaths of viable actions that would never be brought  
10 because of the intimidation effect, and that's the  
11 balance that plaintiffs ask this Court to find falls in  
12 favor of them.

13 To conclude, your Honor, given that the  
14 scope of the protection that the plaintiffs seek is  
15 limited and the significant impact and intimidation  
16 that these kinds of inquiries into immigration status  
17 has on the plaintiffs, we request that the Court grant  
18 the motion. I'd be happy to answer any questions that  
19 you might have.

20 THE COURT: I have a few.

21 MS. BRENNAN: Please.

22 THE COURT: It should be noted that I think  
23 the world of Judge Pollack, so I always pay attention  
24 when someone cites her to me. What kind of case was  
25 that, do you know?

1 MS. BRENNAN: The Wejaja case I believe was  
2 a Fair Labor Standards Act case.

3 THE COURT: Okay.

4 MS. BRENNAN: I would note that with respect  
5 to that -- I believe that defendants suggested that  
6 that's a different kind of case and that for some  
7 reason, the standards wouldn't apply, but that's simply  
8 not the case. The Southern District of New York  
9 addressed that very question in the case Tapa v. Deer  
10 (ph). There, the court explained that the key question  
11 is one of relevance. It's not whether it's a Fair  
12 Labor Standards Act case or it's an Alien Tort Claims  
13 Act case, it's a matter of relevance.

14 THE COURT: So the one argument that the  
15 County made that I didn't hear you address was the  
16 notion that there could be sub-classes, given that you  
17 have a class action here, that the impact of the  
18 complained-of conduct could affect citizens,  
19 naturalized citizens, lawful permanent residents, those  
20 with work authorizations and those without differently.  
21 What about that?

22 In other words, doesn't the County have the  
23 right to know sort of what they're facing in the trial  
24 here? In other words, don't they have the right to  
25 know if there are different groups for whom different

1 relief might be called for, or for some groups that  
2 might not be classes, in other words that may not  
3 qualify as a class because they're not numerous? Don't  
4 they have that right and how do we address that if we  
5 don't do it this way?

6 MS. BRENNAN: I think the answer to that  
7 question is pretty straightforward. The plaintiffs in  
8 this case are suing on behalf of Latino residents in  
9 Suffolk County. As I mentioned before, there's no way  
10 you can look at a person who you might perceive to be  
11 of Latino heritage and evaluate whether that person is  
12 documented, undocumented, a naturalized citizen, in the  
13 process of becoming naturalized.

14 Those are really distinctions without a  
15 difference for purposes of these claims, because the  
16 source of the discrimination doesn't have anything to  
17 do with immigration status. So without getting too far  
18 into details about whether all plaintiffs and witnesses  
19 in this case are documented or undocumented, it doesn't  
20 really make a difference. That's not a basis to  
21 distinguish among the class. I think to the extent  
22 that -- I would note that defendants don't really  
23 explain why it would make a difference. There's  
24 nothing in the complaint --

25 THE COURT: I will agree with you that I

1 don't think it was articulated but I think I can  
2 explain why. In your complaint, and I cite to page 61  
3 of the complaint, you seek U visa authorization or U  
4 visa certifications for what must be by definition some  
5 plaintiffs. In other words, you're looking for  
6 specific immigration relief. Doesn't that fact  
7 distinguish this case from any of the cases you've  
8 cited to me? I couldn't find another case where  
9 immigration relief was sought as part of the complaint  
10 and yet plaintiffs' counsel said, immigration status is  
11 irrelevant and prejudicial and you can't inquire into  
12 it. How can I reconcile those two concepts, counsel?

13 MS. BRENNAN: I think the answer to that  
14 question is that to the extent there are plaintiffs for  
15 whom U visa applications have not already been  
16 completed, that that is the kind of relief that can be  
17 addressed separately and wouldn't necessarily be sought  
18 on behalf of the entire class because to your point --

19 THE COURT: Right.

20 MS. BRENNAN: -- it's not the kind of thing  
21 that lends itself to class-wide relief. I think it's  
22 the same with respect to remuneration for monies that  
23 were taken from certain of the plaintiffs by defendant  
24 Greene. That, too, is not necessarily the kind of  
25 relief that would be on a class-wide basis because, for

1 example, those who have experienced discrimination  
2 through targeted checkpoints that were designed to  
3 target Latino communities or by the failure to  
4 investigate complaints lodged by Latinos, they're not  
5 going to be participating in the efforts to recover  
6 funds.

7 THE COURT: I would still point out to you  
8 that if the U visa relief remains, at some point, the  
9 question must be asked regarding anonymous plaintiffs 1  
10 through 21, please raise your hand if you'd like a U  
11 visa. That's the same as asking them if they're  
12 documented or not, is it not?

13 MS. BRENNAN: Not in the context of a  
14 deposition, your Honor.

15 THE COURT: No, but at some point --

16 MS. BRENNAN: Yes. At some point, to the  
17 extent there are named plaintiffs who have not yet had  
18 the opportunity to apply for a U visa application,  
19 which in fairness concerned the separate criminal  
20 proceeding that was brought against defendant Greene.  
21 And to the extent that at the conclusion of the case,  
22 there are additional plaintiffs who have not yet made  
23 that application, then there would need to be a process  
24 through which they could do so, but we think that that  
25 can be addressed separately.

1 THE COURT: So really your argument then is  
2 not that substantively, this question can never be  
3 asked. You're just arguing when and where and how it  
4 should be asked. Is that fair?

5 MS. BRENNAN: Yeah, I think that's a fair  
6 distinction.

7 THE COURT: Okay.

8 MS. BRENNAN: If we get to the point where  
9 liability is found and it becomes appropriate for a U  
10 visa application to be submitted, I think that we can  
11 take it up then.

12 THE COURT: Okay, but then we have to take  
13 one more step. And when you represent to me here --  
14 you're arguing -- you're doing a fine job, counsel, and  
15 I'm not criticizing you. And it's a big case and  
16 there's a lot of paper and you've got to go through a  
17 lot of things. But when you say to me, Judge, we're  
18 just about people who, I think the argument is looked  
19 or appeared to be Latino and how they were treated,  
20 which actually raises an interesting question about  
21 somebody who is actually not Latino but appears to be,  
22 but that's a question for another day and far above my  
23 pay grade, so I'm glad to say we're not going to talk  
24 about that today.

25 But when you say that the allegations don't

1 have anything to do with status, it makes me look at  
2 the complaint, and I will give you one example, and  
3 there are many. Paragraph 141: You say, upon  
4 information and belief, the 2007 directive -- I know  
5 you all know what that means -- the directive to arrest  
6 all unlicensed drivers has led to the racial profiling  
7 of undocumented Latino immigrants driving on Suffolk  
8 County roads. It's part of your story. It's part of  
9 the allegations you made that the licensing val non of  
10 individuals led to a discriminatory practice as against  
11 undocumented Latinos. With that in mind, how can I  
12 deny the County to make some kind of inquiry in that  
13 area?

14 MS. BRENNAN: I think paragraph 141 is a  
15 good example of where it is the defendants' intent,  
16 it's the County's intent and their perception and their  
17 understanding and their apparent belief that Latino  
18 motorists are more likely to be undocumented immigrants  
19 than a perceived non-Latino motorist. That's what's  
20 relevant in paragraph 141.

21 I think the other thing to bear in mind is  
22 that even there is some marginal degree of relevance as  
23 to documented versus undocumented status, that is not  
24 material to plaintiffs' claims or defendants' defenses  
25 in this case. It's a collateral issue at best and the

1 case is clear -- notably, defendants cite nothing to  
2 the contrary -- that even if there is some degree of  
3 relevance of immigration status to collateral issues in  
4 the case, that does not outweigh the chilling effect  
5 that those kinds of inquiries have on plaintiffs who  
6 are trying to defend their constitutional rights.

7 THE COURT: Okay, good, thank you.

8 MS. BRENNAN: Thank you.

9 THE COURT: Ms. Lopez, the ball is in your  
10 court.

11 MS. LOPEZ: Thank you, your Honor. I  
12 respectfully disagree with plaintiffs' counsel. I  
13 think immigration is material in this case. As the  
14 Court indicated, there are various paragraphs in the  
15 complaint that specifically indicate that -- they talk  
16 about undocumented immigrants living in Suffolk County.

17 In our letter, we cited to paragraph 78 of  
18 the complaint, which pretty much says, in my own words,  
19 that former Sergeant Greene and others from the Suffolk  
20 County Police Department had a policy and practice in  
21 place where they would target undocumented immigrants,  
22 Latinos specifically, because they were under the  
23 belief that they would be vulnerable, they will not go  
24 to law enforcement, they wouldn't report the crime,  
25 they were an easy target and, therefore, it was an easy

1 way to steal money from them. They didn't say that it  
2 was only Greene. They mentioned the police department  
3 in general, your Honor.

4 Based on that, I do again state that  
5 immigration is material in this case. It's not just a  
6 collateral matter and the County shouldn't be precluded  
7 from asking those questions because I think they go to  
8 our defense, which is, the County doesn't have a policy  
9 that discriminated against Latinos and to rob and steal  
10 from them, it was Mr. Greene, the one who had this  
11 scheme going on. He knew who he was targeting, he knew  
12 where he was going, he knew who he could go get and he  
13 knew who was not going to say anything to the police  
14 department because he was their own. Who were they  
15 going to believe, the victim, who is here undocumented,  
16 against a fellow police officer who was doing this?  
17 No, he knew what he was doing.

18 So yes, we should be entitled to ask those  
19 questions based on that. However, Judge, the one thing  
20 that I find interesting in this case is that counsel  
21 has said that we shouldn't be asking about, do you have  
22 a green card, when did you enter the United States, how  
23 did you enter the United States, do you have a Social  
24 Security number? Those questions really haven't been  
25 asked during the depositions, your Honor. The way that

1 we have been asking questions is more about background.  
2 We asked about, how long have you been in the United  
3 States? Why? Because we want to set a time frame as  
4 to when they have been residing in Suffolk County.

5 Perhaps we should have started by, how long  
6 have you been a Suffolk County resident, and then, have  
7 you lived in any other counties, have you lived in any  
8 other states? And we have done that. Then we go to  
9 the question as to, how long have you been in the U.S.?  
10 Why? Because we want to establish a time frame.  
11 You've been here for fifteen years? Great. Did you  
12 come to New York State from the start or were you  
13 living in other places?

14 The reason why we were asking those  
15 questions is because in some of these cases when they  
16 have been pulled over, the vehicles have been  
17 registered in Texas, they have been registered in  
18 Virginia. There's connections to other states.  
19 Therefore, we want to know, one, have you ever been in  
20 Texas or Arizona, whatever other state you have ever  
21 been to, and how long? And if you have, have you ever  
22 had any encounters with law enforcement? Why? Because  
23 we want to know if they have been pulled over, if they  
24 have been issued traffic violations and things of that  
25 sort, which again relates to the complaint. They're

1 saying that every time they have been pulled over in  
2 Suffolk County is because they are Latino, they have  
3 been targeted and there was no basis for the stop.  
4 Those have been our questions, your Honor.

5 I do admit that we did ask about the status  
6 of their U visa application. The reason why we asked  
7 those questions is because during discovery, they gave  
8 us not the U visa application that was submitted. They  
9 only gave us the certification that was signed by the  
10 law enforcement, by Suffolk County or the ADA who  
11 prosecuted the case. Based on the fact that they  
12 produced that, they gave it to us, we asked, what's the  
13 status?

14 Now the Court might ask, why do you ask  
15 about the status of the U visa application? Because it  
16 lends to -- when you get a U visa approved, you get a  
17 Social Security number and you get employment  
18 authorization, which connects to what the Court asked,  
19 what about the driver's license issue? Because if you  
20 have a Social Security number, you will be able to get  
21 a driver's license. If you have a driver's license,  
22 then you shouldn't be getting tickets for operating a  
23 vehicle without a license. So there is a connection to  
24 the questions that we have asked, Judge.

25 We have not been intimidating, we have not

1 been harassing, we have not at any point in time asked,  
2 have you ever been deported, have you ever been placed  
3 in immigration proceedings? Have you ever been  
4 arrested by ICE, did you cross the border, was it  
5 through a visa, did you fly in, did you cross the  
6 river, have you ever been -- did you pay a sponsor to  
7 come in? Those questions haven't been asked. Perhaps  
8 we could be able to ask those questions but we haven't  
9 because we don't need that at this point. For them to  
10 say that we cannot ask about -- preclude us completely  
11 from asking any background information is just not  
12 correct. We should be entitled to present our defense.

13 I wanted to address also about the fact -- I  
14 wanted to make another point, Judge. I think in  
15 probably two of the depositions, we haven't even asked  
16 the plaintiffs, where were you born, which I think we  
17 shouldn't be precluded from asking that question,  
18 either. I mean at the end of the day, they are  
19 claiming that they're Latinos. And yes, you can be  
20 Latino and born in the United States or like me. I was  
21 born in Colombia and I'm a U.S. citizen, but yet we  
22 should be entitled to ask those basic questions because  
23 they do have to prove that they're Latinos and they  
24 haven't. So again, our depositions haven't been  
25 aggressive. We have not been intimidating the

1 plaintiffs. We just have been asking the questions  
2 that I think needed to be asked in order to set forth  
3 our defense.

4 As far as the sub-classes that the Court  
5 touched upon, and it was one of the points that we're  
6 bringing is that they want to certify a class of all  
7 Suffolk County residents that are Latinos who somehow  
8 may or perhaps in the future may be discriminated  
9 against by the police department. Our argument is that  
10 that definition as is is over-broad because this case  
11 at this point has only established that the people that  
12 Greene was targeting were those people who were  
13 vulnerable and didn't have documents in the United  
14 States.

15 If that is the case, I'm part of the class,  
16 Judge. I'm a Suffolk County resident, always have  
17 been, and I'm Latina, and I have never had an  
18 interaction with the police department. So we should  
19 be entitled to ask those questions.

20 THE COURT: That touches on an interesting  
21 topic. I'm going to throw one more question your way  
22 and then I want to hear from Mr. Greene if he has  
23 anything to add. I mentioned earlier that there could  
24 be people in the world that may be notified here who  
25 appear to be Latino but are not, in other words born in

1 the Ukraine, the family has been in the Ukraine for a  
2 thousand years but happens to appear to be Latino. I  
3 mentioned the question before about whether that person  
4 could be a class member and I don't know the answer.  
5 But assuming the answer is no, isn't that another basis  
6 for inquiring as to the sort of bona fides of whether a  
7 particular plaintiff is in fact Latino or identifies as  
8 Latino, and aren't all these questions relevant to  
9 that?

10 MS. BRENNAN: I think the answer to your  
11 first question is yes and to your second question is --

12 THE COURT: Meaning that if I'm born in the  
13 Ukraine, I still can qualify as a the plaintiff?

14 MS. BRENNAN: No, I had forgotten about that  
15 question.

16 THE COURT: Sorry.

17 MS. BRENNAN: The class is limited to those  
18 of Latino heritage who are resident in Suffolk County.

19 THE COURT: How do we know then?

20 MS. BRENNAN: I think -- none of the  
21 questions that we're seeking to preclude go to self-  
22 identification of race, go to the origin, ethnicity,  
23 country of origin. That's not on the list of questions  
24 that we're seeking to preclude. We have given no  
25 instructions in depositions. To the extent that

1 defendants have asked questions about country of  
2 origin, we haven't told our clients not to answer those  
3 questions. So there's something of a red herring  
4 there. That's nothing that we're trying to preclude  
5 from discovery here.

6 THE COURT: So to be clear, if Ms. Lopez  
7 asked the question, where were you born, you were fine  
8 with that?

9 MS. BRENNAN: We recognize under the  
10 circumstances of the nature of the class on whose  
11 behalf we are suing that that is a relevant inquiry. I  
12 will say that there are distinctions that are drawn  
13 between race/national origin.

14 THE COURT: Sure.

15 MS. BRENNAN: But without getting into the  
16 finer points of those issues, that question is not on  
17 the list of questions that we're seeking to preclude.

18 The other thing that I would add is that Ms.  
19 Lopez's colloquy about driver's license and states of  
20 registration and different plates and all of that  
21 information, again, those questions are not on the list  
22 of topics that we're seeking to preclude here, so  
23 there's simply no basis for defendants' position that  
24 plaintiff's motion would somehow impact their ability  
25 to discover that information. If they'd like to ask

1 how long a witness has been resident in Suffolk County,  
2 they're welcome to do so. We're not instructing our  
3 clients not to answer those questions. The scope of  
4 relief that we're seeking here is very limited.

5           The last point that I would just add on that  
6 note is that defendants have asked at least one witness  
7 -- let me get the direct quote -- "you currently do not  
8 have a green card, is that correct?" That is an  
9 example of questions that should be precluded in this  
10 case.

11           THE COURT: All right, thank you.

12           Mr. Greene, do you have anything you want to  
13 add on this issue?

14           MR. GREENE: No, sir. As I've said before,  
15 I feel as though I'm at a disadvantage. So to try to  
16 preclude or ask anything -- I don't want to overstep my  
17 bounds. So at this time, I'll just take in the  
18 information but right now, I have no questions here.

19           THE COURT: Okay, thank you, sir. I  
20 appreciate that.

21           MR. GREENE: Thank you.

22           THE COURT: I'm going to take one minute to  
23 just check something. I'll be right back and then I  
24 think I'm going to be in a position to rule on this, so  
25 stand by.

1 (Tape off, tape on.)

2 THE COURT: I've read all the papers, I've  
3 listened to counsel's arguments, all of which were very  
4 well done, and I'm prepared to issue a ruling on this  
5 question.

6 Before the undersigned is an application by  
7 plaintiffs for a protective order "prohibiting the  
8 County of Suffolk and other defendants from questioning  
9 plaintiffs or other protected individuals on matters  
10 related to immigration status." That's DE-91 on page  
11 1.

12 This issue apparently crystalized during the  
13 deposition of one of the plaintiffs on January 12,  
14 2017. After a handful of questions, counsel for the  
15 County asked the witness, "How long have you lived in  
16 the United States?" That's DE-83-1 at page 10.

17 Counsel for plaintiffs interposed an  
18 objection and instructed the witness not to answer.  
19 The situation quickly devolved -- a word I do not use  
20 in a pejorative sense, just an observational sense, but  
21 it devolved into a debate among counsel about the  
22 propriety of inquiring into the immigration status of  
23 the witness or asking any question that could  
24 potentially bear on that issue. If anyone wants to  
25 read that, it's at pages 10 to 24 of the deposition.

1           Rather than seek a telephonic ruling,  
2   counsel opted to suspend the deposition and perhaps  
3   further depositions in the case and file motion papers  
4   with the Court, which was I believe a wise decision  
5   given the complexity of these issues. Plaintiffs filed  
6   the instant motion on May 3<sup>rd</sup> and the County filed its  
7   response on May 8<sup>th</sup>. Argument was held today and  
8   counsel again did a fine job presenting this. The  
9   background of this matter is set forth in detail in  
10   Judge Spatt's order dated October 14<sup>th</sup>, 2015,  
11   familiarity with which is assumed and which is  
12   incorporated by reference herein. If anyone wants to  
13   look that up, that's at DE-36.

14           To discuss this a little bit more,  
15   plaintiffs' primary argument in support of its motion  
16   centers on the notion that immigration status is  
17   irrelevant to the claims and defense in this action,  
18   rendering such inquiry "inappropriate." That also can  
19   be found in DE-82.

20           Counsel for plaintiffs argued more  
21   specifically that, "County defendants' counsel  
22   fundamentally misunderstands plaintiffs' complaint,  
23   which makes clear that plaintiffs were victims of  
24   unconstitutional discrimination and discriminatory  
25   police action based on defendants' perceptions, however

1 flawed, regarding plaintiffs' Latino heritage, not  
2 their immigration status. Members of the class were  
3 discriminated against because they are Latino, not  
4 because of their immigration status. Whether the  
5 plaintiffs are U.S. citizens, lawful permanent  
6 residents or presently seeking a change in their  
7 immigration status is irrelevant to whether they were  
8 the target of discriminatory police action because of  
9 their Latino heritage or any discriminatory assumptions  
10 and perceptions made by police about their Latino  
11 heritage." That's DE-82 on page 1.

12           Indeed, if the allegations of the complaint  
13 were so limited, plaintiffs' point would be well-taken.  
14 In other words, had the complaint focused on the  
15 targeting of plaintiffs and others as potential robbery  
16 victims based solely upon the belief that they were  
17 undocumented workers -- I apologize, that's incorrect  
18 -- based on a belief that they were Latino and solely  
19 on that belief, then the question of their actual  
20 immigration status would likely be irrelevant. See  
21 complaint by way of example at paragraph 78.

22           "Defendant Greene and various John Doe  
23 defendants, SCPD officers, had a practice and pattern  
24 of targeting Latino drivers for unlawful stops and  
25 searches, during which cash was stolen. Suffolk County

1 Latinos were specifically targeted based on the belief  
2 that these drivers were likely to be undocumented and  
3 therefore prone both to carry cash and not to report  
4 any theft." Again, that's from the complaint.

5           However, as plaintiffs' counsel observed  
6 during the suspended deposition that catalyzed this  
7 dispute, this complaint extends past Officer Greene.  
8 It extends well beyond Greene, and that's DE-83-1 at  
9 14. Indeed, a review of the complaint and First  
10 Amendment complaint tends to undercut the  
11 characterization of the allegations proffered by  
12 plaintiffs' counsel on this motion.

13           I would note that in an effort to buttress  
14 their characterization, counsel cites Judge Spatt's  
15 discussion of the allegations in an opinion authorizing  
16 plaintiffs to proceed anonymously, which is found at  
17 DE-82 at 1. However, in that decision, Judge Spatt  
18 provided only a "brief overview of the serious  
19 allegations contained in the plaintiffs' 62-page  
20 complaint." That's DE-36 at 3, which summary obviously  
21 focused on those allegations which heightened the  
22 perceived risks of retaliation that warranted granting  
23 permission to proceed anonymously.

24           The complaint alleges that in 2007, the  
25 County adopted a "policy to arrest all unlicensed

1 drivers," which it alleged "led to the aggressive  
2 pursuit and stopping without cause of undocumented  
3 Latino immigrants driving on Suffolk County roads."  
4 That's DE-21 paragraph 139.

5 More specifically, it alleged that, "In  
6 April, 2007, then Suffolk Assistant Chief of Patrol  
7 Robert Ponzo sent an email to the SCPD commanders  
8 stating that, "Starting immediately, any person  
9 operating a motor vehicle who is not licensed will be  
10 summarily arrested if he or she had no other form of  
11 identification." That's from paragraph 138.

12 According to the complaint, in 2009, a PBA  
13 official, "publicly stated that he believed this 2007  
14 directive to arrest all unlicensed drivers led to the  
15 aggressive pursuit and stopping without cause of  
16 undocumented Latino immigrants driving on Suffolk  
17 County roads." That's paragraph 141 which I cited  
18 earlier during the argument.

19 The complaint claims that the 2007 "policy,  
20 which was enacted as a means to target and harass  
21 undocumented Latinos in Suffolk County, is still in  
22 effect today." Again, paragraph 142.

23 In describing the constitutional violations  
24 complained of, the amended complaint charges -- and  
25 this is a quote from the complaint: "Defendants'

1 constitutional violations were and are directly and  
2 proximately caused by policies, practices and/or  
3 customs enforced, encouraged and sanctioned by the SCPD  
4 and Suffolk County, including A) SCPD Commissioner  
5 Richard Dormer's 2007 order to officers to arrest any  
6 person operating a motor vehicle who is not licensed if  
7 they are unable to offer another form of  
8 identification, and Commissioner  
9 Weber's refusal to rescind such a policy currently in  
10 use today." That's from paragraph 169 and you can also  
11 see paragraph 192, which says the same thing.

12           Because the complaint specifically alleges  
13 that the 2007 policy affected plaintiffs and potential  
14 class members lacking documentation, these allegations  
15 are difficult to reconcile with the arguments posited  
16 by plaintiffs' counsel on this motion. For avoidance  
17 of doubt, the issue of whether these claims are  
18 actionable is not before the undersigned and nothing in  
19 this ruling should be so construed.

20           While plaintiffs' counsel has not  
21 articulated this position, it could be argued that,  
22 notwithstanding their heft, the allegations constitute  
23 contextual surplusage. However, the first amended  
24 complaint also contains the following demand on page 61  
25 in its prayer for relief, which seeks "the appointment

1 and authorization of a special master or monitor to  
2 assess the eligibility of class members for U visas  
3 certifications based upon whether they have been  
4 helpful, are being helpful or are likely to be helpful  
5 in the investigation or prosecution of qualifying  
6 criminal activity and endorse United States Citizenship  
7 and immigration Services form 1-918 supplement B U non-  
8 immigrant status certification regarding the same."

9           This demand appears relevant only to those  
10 plaintiffs and potential class members who require a  
11 change to their immigration status. As such, the  
12 demand for U visas appears to dovetail with the  
13 argument made by the County to suggest that inquiry  
14 into immigration status are relevant to its defense  
15 given the facts of this case.

16           Specifically, the County argues, among other  
17 things, that it "seeks to establish through discovery  
18 that there are different, if not many, subclasses of  
19 Latinos in Suffolk County: 1) citizens, 2) naturalized  
20 citizens, 3) lawful permanent residents, 4) work  
21 authorization or other lawful status, and/or 5)  
22 undocumented immigrants. The County will show that  
23 plaintiffs' proposed class is over-broad, that all  
24 Suffolk County Latinos are not similarly situated and  
25 that not all Latinos residing in Suffolk County are at

1 risk of discriminatory practices.” That’s DE-95 at 4.

2           Thus, it would seem that the County requires  
3 the information sought to formulate an argument as to  
4 the breadth and scope of the proposed class and  
5 ascertain whether the named plaintiffs are suitable  
6 representatives of said class or, if they exist, other  
7 subclasses. Clearly, in light of the allegations made  
8 in and the relief sought by the First Amendment  
9 complaint, inquiry into immigration status does seem  
10 reasonably calculated to lead to the discovery of  
11 admissible evidence.

12           At the same time, counsel for plaintiffs  
13 correctly notes that there is a substantial body of  
14 case law recognizing the “chilling effect” of such  
15 inquiries. You can see DE-91 but among other things,  
16 there was a cite to Judge Pollack’s decision in Flores  
17 v. Amigon as well as Judge Knaff’s (ph) decision in Lu  
18 v. Donna Karen International, et cetera, and I won’t  
19 burden the record with quotes from those cases but  
20 suffice it to say, they are persuasive on the question  
21 of chilling effect.

22           In response to these cases, the County  
23 points to the substantial accommodations already in  
24 place which would help mitigate these effects,  
25 including the extant confidentiality order and

1 subsequent agreement to seal the deposition  
2 transcripts. See DE-95 at 4, where those matters are  
3 discussed, as well as DE-36, which was the order of the  
4 district court permitting plaintiffs to proceed  
5 anonymously.

6           These steps certainly will help allay the  
7 concerns raised. I have to add that counsel for  
8 plaintiffs acknowledged during argument today that at  
9 some point, given the U visa requests and so forth, the  
10 issue of plaintiffs' status must be explored in  
11 connection with the prayer for relief. I believe,  
12 however, this may need to be explored prior to the  
13 class certification phase of the case, so balancing  
14 these issues is quite complicated.

15           Fortunately, the rules empower this Court to  
16 take additional steps to minimize the burden and  
17 expense imposed by the discovery process on any  
18 particular party. Here I cite Crawford-El v. Britain,  
19 118 S.C. 1584, where the Supreme Court of the United  
20 States told us, "The court may limit the time, place  
21 and manner of discovery or even bar discovery  
22 altogether on certain subjects as required to protect a  
23 part or person from annoyance, embarrassment,  
24 oppression or undue burden or expense." They're citing  
25 Rule 26(c). They go on to say, "And the court may also

1 set the timing and sequence of discovery," again citing  
2 26(d). And that's the end of the Supreme Court's  
3 quote.

4 Pursuant to this authority, this Court  
5 hereby adopts the following procedure for this case:  
6 Prior to the recommencement of depositions, or if they  
7 have recommenced, prior to additional depositions,  
8 counsel for plaintiffs shall provide counsel for  
9 defendants with a list identifying the immigration  
10 status of each plaintiff or other witness to be  
11 deposed, accompanied by documents supporting the claims  
12 of those reporting legal status. Where appropriate, of  
13 course, counsel may also indicate that one or more  
14 individuals will invoke a privilege against self-  
15 incrimination, which they may well be entitled to do.

16 Said list will have the same effect as an  
17 interrogatory response or a response to a request for  
18 admission and will be subject to the confidentiality  
19 orders and agreements currently in place. By providing  
20 this information in a less adversarial setting, this  
21 procedure will hopefully help further minimize the  
22 "chilling effect" identified by plaintiffs' counsel and  
23 hopefully avoid further delays in conducting  
24 depositions in this matter.

25 Obviously, I cannot anticipate every

1 question that may arise. I will leave it to counsel's  
2 good judgment to try to implement the principles that  
3 I'm setting forth today. The Court is of course always  
4 available to resolve further disputes as they  
5 crystalize. Based on that ruling, I am going to grant  
6 in part and deny in part the protective order, granted  
7 only to the extent set forth herein, which would be the  
8 additional procedural protections that I've set forth  
9 today.

10 With that out of the way, are there other  
11 matters we should discuss while we're here today?

12 MS. BRENNAN: I think with respect to  
13 defendant Greene, your Honor, while we're all in the  
14 room and defendant Greene is on the line, there are  
15 just two housekeeping matters there.

16 Defendant Greene, this is Mallory Brennan  
17 from Shearman & Sterling. I represent the plaintiff in  
18 this case. You either have already received or should  
19 receive shortly acknowledgments to be -- that you  
20 should sign if you'd like to receive the confidential  
21 materials in this case. That's pursuant to Judge  
22 Brown's order that was issued last month. Those were  
23 mailed to you. I don't think we have a return mail  
24 receipt but they should be there. So if you can sign  
25 and return those, we will include the deposition

1 transcripts and the plaintiffs' names together with --  
2 I believe you had also requested a full set of the  
3 docket. That's something that plaintiffs would be  
4 willing to undertake and prepare for you, so we will  
5 send all of that together, assuming that meets with the  
6 Court's approval.

7 THE COURT: That's fine with me.

8 Mr. Greene, do you have those  
9 acknowledgments? Do you know what counsel is referring  
10 to?

11 MR. GREENE: I did receive something the  
12 other day, your Honor. I believe it's in fact what Ms.  
13 Brennan is talking about. There is some confusion in  
14 reading them. I hate to be signing something and then  
15 limiting myself from that point forward if let's say  
16 another situation was to arise. So without being able  
17 to get a clear and precise interpretation of what those  
18 documents actually say -- I'm doing my best to try to I  
19 guess translate them via the law library at the  
20 location I'm at. But at the current time, I can't say  
21 that I will sign them or I won't. I'm still trying to  
22 figure out exactly what my limitations are once I do  
23 sign them.

24 THE COURT: Okay, so here's the thing. I  
25 now have an explanation as to why he didn't get the

1 documents. That's fine.

2 Basically, if you want the documents that  
3 are subject to the confidentiality order, you have to  
4 make yourself subject to that order and I imagine that  
5 that's what the acknowledgment suggests.

6 MR. GREENE: Right.

7 THE COURT: But understand I haven't seen  
8 them so I don't know what they say, so do your best to  
9 get through them.

10 MR. GREENE: Okay.

11 THE COURT: And if you want the material,  
12 you need to sign it. If not, we can revisit that at  
13 some later point, all right?

14 MR. GREENE: Okay, very good.

15 THE COURT: Anything else?

16 MS. BRENNAN: In light of the Court's order  
17 today, we have an existing discovery cutoff deadline of  
18 July 7<sup>th</sup>. We will be putting --

19 THE COURT: Wow, you're going to have a busy  
20 weekend.

21 MS. BRENNAN: Busy 4<sup>th</sup> of July, I know. I  
22 was conferring with Ms. Lopez earlier. We will put  
23 together a proposed revised schedule that makes sense,  
24 so we'll be submitting that, but we won't take up your  
25 time negotiating that right now.

1           THE COURT: Lest anyone not sleep this  
2 weekend, I will extend the -- I will give you some  
3 reasonable extension.

4           MS. BRENNAN: Thank you very much.

5           THE COURT: Anything else for the County?

6           MS. LOPEZ: No, your Honor, thank you.

7           THE COURT: Mr. Greene, while we have you,  
8 anything else for you, sir?

9           MR. GREENE: No, sir, thank you.

10          THE COURT: Everyone had a good holiday  
11 weekend. We are adjourned. Thank you.

12          MS. BRENNAN: Thank you, your Honor.

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18 I certify that the foregoing is a correct  
19 transcript from the electronic sound recording of the  
20 proceedings in the above-entitled matter.  
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25 ELIZABETH BARRON

August 15, 2017